147 US 149

RECORD, CASE No. 15,202.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO., 1232.

THE UNITED STATES EX REL. ELIZABETH TRASK,
PLAINTIFF IN ERROR,

vs.

JOHN WANAMAKER, POSTMASTER GENERAL.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED NOVEMBER 11, 1892.

recover from the railroad company the amount of the tax of five per cent. imposed upon the interest of bondholders by the act of 1864 and withheld by the company. A similar tax was imposed by the statute of Pennsylvania. The plain- tiff claimed that as he was an alien non-resident it was not in the power of Congress or of the State to tax him. The courts of Pennsylvania had sustained the deduction. Mr. Justice Nelson in delivering the opinion of this court and in remarking upon the decisions of those courts 'that the deduction from the prescribed income of interest on this railroad bond when paid by companies was regarded as simply a mode of collecting this part of the income tax,' says, 'We concur in these views.'"

S. P. Wolverton,
Counsel for Defendant in Error.

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a In the Supreme Court of the District of Columbia.

THE UNITED STATES *ex Rel.* ELIZABETH TRASK
vs.
JOHN WANAMAKER, Postmaster General.

UNITED STATES OF AMERICA,
District of Columbia, *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Amended Petition Filed June* 24, 1892, *in Lieu of Petition Filed June* 14, 1892.

In the Supreme Court of the District of Columbia.

THE UNITED STATES *ex Rel.* ELIZABETH TRASK
vs. No. 33047.
JOHN WANAMAKER, Postmaster General.

Amended & verified petition for mandamus.

The relator, Elizabeth Trask, a citizen of the United States and residing at Emporia, in the State of Kansas, shows to your honors—

That on or prior to Sept. 22, 1864, she was duly appointed postmaster at Emporia, Kans., which said office had been established prior to July 1, 1864, and that upon the first day of Oct., 1864, she was duly qualified as such postmaster by giving a bond, which was approved, and taking the oath of office, and immediately entered upon the discharge of the duties of said office and continued from that time regularly and fully to discharge all the duties of said office up to and including June 30, 1870, and that during the whole of said period her said office was assigned to and remained a fourth-class office; that amongst these duties she made full returns of the business and receipts of the said office on the last day of each quarter to the auditor for the Post Office Department, and accordingly that during that part of the biennial term ending June 30, 1866, during which she was postmaster she returned and paid over to the United States $1,389.42 for postages by her received, and that for and during the whole of said biennial term there was returned and paid over to the United States for postages received within said term $1,567.98, the commissions upon which, under the act of June 22, 1854, amounted to $863.99, of which sum your relator would have been entitled to a salary of $755.99 upon a readjustment of her said salary under the provisions of section 8 of the act of June
2 12, 1866, for the seven quarters during which she served as postmaster in said term.

In the same way that for and during the biennial term ending June 30, 1868, she returned and paid over in postages to the auditor for the Post Office Department $2,230.73 and $75 received from box rents, upon which postages and box rents she would have been entitled under the act of June 22, 1854, to $1,270.37. So also for and during the biennial term ending June 30, 1870, she returned and paid over to the same officer in postages and box rents $6,312.53, of which the box rents amounted to $230, upon which postages and box rents she would have been entitled under the act of June 22, 1854, to $3,139.83.

The relator further shows that for the seven quarters during which she served in the biennial term ending June 30, 1866, she was allowed and paid a salary amounting to $580; that for the biennial term ending June 30, 1868, she was allowed and paid a salary amounting to $800, and that for the biennial term ending June 30, 1870, she was allowed and paid a salary amounting to $1,580.

The relator also shows that it became the duty of the Postmaster General, under the provisions of section 8 of the act of June 12, 1866 (14 Stats., page 60), to readjust her salary at the end of each biennial term in consequence of the fact that the salary allowed her was ten per cent. less than her pay would have been in commissions under the act of 1854 (10 Stats., page 298), and to allow her in such readjustment the difference between the salary allowed to her in each of said biennial terms and the amount of compensation she would have received in each of said terms in commissions under the act of 1854.

Also that the Postmaster General refused to readjust her salary as such postmaster for either of said biennial terms of service, and that afterwards she sued in the Court of Claims to recover her unadjusted salary and failed to recover, for the reason that such read-
3 justment was a necessary preliminary to a suit for the money.
(95 U. S., 750.)

Also that she then applied to Congress for relief, and that thereupon the act of March 3, 1883, chapter 119, was enacted entitled "An act authorizing and directing the Postmaster General to readjust the salaries of certain postmasters in accordance with the provisions of section 8 of the act of June 12, 1866."

The relator shows that about the 8th day of March, 1884, in compliance with the requirement of the last-mentioned act, she presented an application (signed by herself and setting forth the address of the post office at which she resided) for a readjustment of her salary as such postmaster for the said terms of her service hereinbefore set forth to W. Q. Gresham, then Postmaster General.

The relator shows that upon the 9th day of June, 1883, the Postmaster General issued an order for the carrying into effect of the said act of March 3rd, 1883, directed to the First Assistant Postmaster General, a copy of which said order is attached to this petition and made a part hereof and marked Exhibit A; that in this order the Postmaster General construed the said act of March 3rd, 1883, and the said section 8 of the act of June 12th, 1866, and recognized and affirmed the relator's right to readjustment of her salary, which would give her the difference between the salary formerly allowed her in each of the said terms and what she would have received in commissions under the said act of 1854, saying:

"This construction leaves in full force the policy inaugurated by the act of July 1st. 1864, of paying salaries to postmasters which are fixed for a period of two years in advance, the amendment simply providing that all postmasters of the third, fourth, and fifth class whose compensation was thus reduced ten per cent. or more below what they would have received under the act of 1854 shall have their salaries fixed upon the basis of the latter act. * * * If, in fact, there are cases in which it appeared from the quarterly returns or from sworn reports of the receipts and business that post-
4 masters of the third, fourth, and fifth class at the biennial
readjustment had their salaries fixed under the act of 1864, when by an adjustment under the act of 1854 ten per cent. or more would have been added to their salaries, then, under the act of 1883, such postmasters are entitled to whatever additional sum they would and should have received under the act of 1854."

The relator shows that on the 16th or 17th of February, 1884, the Postmaster General dictated for publication and caused to be published throughout the country as the requirement of the said act of March 3, 1883, and the construction put upon said act by the department the following, to wit:

"WASHINGTON, *February* 17, 1884.

The Attorney General has rendered an opinion in regard to the construction of the act of March 3, 1883, relative to the readjustment of postmasters' salaries.

He holds that in all cases in which it appears from a biennial readjustment of salaries of postmasters of the third, fourth, or fifth classes that they received ten per cent. or more less than they would have received in commissions under the act of 1854 they are now entitled under the act of March 3, 1883, to the difference between what was paid them and what they would have received as commissions under the act of 1854.

He also holds that it is not the intent of Congress by the acts of 1864 and 1866 to dispense with biennial readjustments. It follows that a claimant under the act of March 3, 1882, must show that the acts subsequent to 1854 deprived him of ten per cent. or more of what he would have received if those statutes had not been enacted and he had been compensated on the basis of the act of 1854.

This opinion of the Attorney General is in harmony with the construction of these statutes by the department."

The relator shows that following the publication above set forth the Postmaster General published and continued to publish, so long as the presentation of claims under the act of March 3, 1883, was not barred by statute, a circular purporting to contain the construction put upon the acts herein referred to by the Postmaster General, which said circular is hereto attached and made a part of this petition and marked Exhibit B.

The relator shows that in order to carry into effect the public
orders herein set forth the Postmaster General prepared or
5 caused to be prepared forms upon which to register the postal
receipts and the salary paid of each quarter in each biennial term, and upon which to compute the salary under the acts of 1866 and 1883 on the basis of the act of 1854, and upon which to compare the salary thus computed with the salary paid in each biennial term, and upon which to state the difference between the salary paid and the salary thus computed, one of each of which said forms *are* hereto attached and made part of this petition and marked Exhibit*s* C.

The relator further shows that the Postmaster General caused to be entered upon the forms described the sum of $1,567.98 as the amount of the postal receipts at the claimant's post office of Emporia, Kans., during the biennial term ending June 30, 1866, the sum of $2,230.73 as the amount of postal receipts of the relator as such postmaster for the biennial term ending June 30, 1868, and $6,312.53 as the amount of relator's receipts as such postmaster for the biennial term ending June 30, 1870, and that the Postmaster General caused the amount of the relator's salary upon the above receipts to be computed upon the basis of the act of 1854, and caused to be entered upon the forms described the sum of $863.99 as the amount of the salary at said post office under the acts of 1866 and 1883 for the biennial term ending June 30, 1866, and stated the amount of the same as the relator's salary for the seven quarters within that term at $755.99, and that the Postmaster General caused to be entered upon the said forms the sum of $1,270.37 as the amount of the relator's salary under the acts of 1866 and 1883 for the biennial term ending June 30, 1868, and $3,139.83 as the amount of the relator's salary under the said acts for the biennial term ending June 30, 1870.

The relator further shows that the entries above recited of the amount of the relator's salary under the said acts are the correct amounts and are correctly stated as required by the said acts. The relator further shows that the defendant as Postmaster General prepared or caused to be prepared a statement upon a schedule of
the total amount of the relator's readjusted salary due and
6 unpaid for the whole time between Oct. 1, 1864, and June
30, 1870, and transmitted such statement to the Committee on Post Offices and Post Roads of the Senate, which said statement exhibited as due the relator $2,175.57, but afterwards the Postmaster General withdrew said statement from said committee, and after the said withdrawal the said statement was re-examined and an error found therein was corrected and an entry made of the corrected amount, which said entry exhibits the correct amount due the relator to be $2,206.19.

The relator shows that, the Postmaster General having refused to report to the auditor for the Post Office Department for credit in the relator's account the amount found due her upon the said readjustment, suit was brought in the Court of Claims in Dec., 1890, to recover a judgment for the amount due, which said suit was dismissed by the Court of Claims on the 16th of May, 1892, upon the ground that the failure of the Postmaster General to report the amount due rendered of no effect the action taken, the words of the court being that "we must hold that no action has been taken by the department under the act of 1883, and that no readjustment has been made."

The relator shows that it is made necessary by the act of July 1, 1864, that the defendant, as Postmaster General, shall report to the auditor of the Treasury for the Post Office Department a direction to that officer to credit in the relator's account as postmaster the sum of $2,206.19, ascertained to be due her upon a re-examination and readjustment of her salary, within the three biennial terms mentioned, in conformity to the acts of 1866 and 1883, and that by the refusal of the Postmaster General to comply with the said laws the relator is deprived of the credit in her account for the salary to which she is entitled, and that there is no remedy for this denial of her rights except by writ of mandamus requiring the Postmaster General to report the same for credit.

The relator shows that it is the ministerial duty of the defendant as Postmaster General, under the provisions of section 2 of the act of 1864 and under the acts of 1866 and 1883, to direct
7 the auditor of the Treasury for the Post Office Department
to enter a credit in the relator's account as postmaster of $2,206.19, found due her upon a re-examination and readjustment of her salary as such postmaster between Oct. 1, 1864, and July 1, 1870, under section 8 of the act of 1866 and under the act of March 3, 1883, and the relator shows that she, through her attorney, has made frequent demands upon the Postmaster General that he make such direction to the auditor, and that finally, on or about the first day of June, 1892, she made a last and formal demand upon the defendant, through her said attorney, Harvey Spalding, that he make the said direction, but that the defendant has neglected and refused so to do.

The relator therefore prays that a writ of mandamus may issue from this honorable court addressed to John Wanamaker, Postmaster General, commanding him to report to the auditor of the Treasury for the Post Office Department that upon an examination of the relator's quarterly returns as postmaster at Emporia, Kans., during her terms of service between Oct. 1, 1864, and June 30, 1870, and a recomputation of her salary as required by section 8 of the act of June 12, 1866, and the act of March 3, 1883, it is found that the additional salary, $2,206.19, is due her, for which she is entitled to be credited in her account.

(Signed) ELIZABETH TRASK,
By HARVEY SPALDING,
Her Attorney.

DISTRICT OF COLUMBIA, *ss:*

Harvey Spalding, being duly sworn, deposes and says that he is the attorney of the above-named relator, and that the facts as stated in the above petition are true.

(Signed) HARVEY SPALDING.

Subscribed and sworn to before me this 13th day of June, 1892.
(Signed) FRANK B. MARLOW,
[SEAL.] *Notary Public.*

8 STATE OF KANSAS, } *ss:*
County of Lyon, }

Elizabeth Trask, being duly sworn, deposes and says that she is the petitioner named in the foregoing petition, and that the facts stated in said petition as within her own knowledge are true, and that the facts stated which are not within her own knowledge she believes to be true.

(Signed) ELIZABETH TRASK.

Subscribed and sworn to before me this 20th day of June, 1892.
(Signed) M. Q. STARR,
[SEAL.] *Clerk Dist. Court, Lyon Co., Kans.*

9 EXHIBIT "A."

Claims of Postmasters for Readjustment of Salaries under Act of March 3, 1883.

POST OFFICE DEPARTMENT,
WASHINGTON, D. C., *June* 9, 1883.

Hon. Frank Hatton, First Assistant Postmaster General.

SIR: A careful examination of act approved March 3, 1883, entitled "An act authorizing and directing the Postmaster General to readjust the salaries of certain postmasters in accordance with the provisions of section 8 of the act of June 12, 1866," has satisfied me that the purpose of this legislation is to require the Postmaster General, in all cases in which any one of his predecessors has failed to comply with the provisions of section 2 of the act of July 1, 1864, as amended by section 8 of the act of June 12, 1866, requiring a readjustment of salaries in offices of the third, fourth, and fifth classes, to proceed to make such adjustments under the terms of that section.

It is essential, therefore, to ascertain the exact meaning of section 2 of the act of July 1, 1864, and the change effected by the amendment of June 12, 1866.

The act of June 22, 1854, authorized the Postmaster General to allow commissions to postmasters at the following rates on the postage collected at their respective offices in each quarter of the year, and in due proportion for any period less than a quarter:

On not exceeding $100, 60 per cent.
Over $100 and not exceeding $400, 50 per cent.
Over $400 and not exceeding $2,400, 40 per cent.
Over $2,400, 15 per cent.

There are certain qualifications and additions to these commissions not necessary to enumerate for the purpose of this examination.

Under the provisions of this act the commissions were allowed to postmasters upon each quarterly return.

The act of July 1, 1864, classified postmasters according to the salary received. Those whose compensation was not less than $3,000 yearly were placed in the first class; those whose commissions were below that sum and yet reached $2,000 per annum were of the second class; post offices with the salaries between $1,000 and $2,000 were of the third class; those between $100 and $1,000 of the fourth class, and those under $100 constituted the fifth class.

Post offices were to be arranged in these classes whenever for the two consecutive years next preceding July 1, 1864, the compensation at the office should have amounted to the average sum assigned to the class.

The second section of the act reads as follows:

"And be it further enacted, That the Postmaster General shall review once in two years, and in special cases, upon satisfactory representation, as much oftener as he may deem expedient, and readjust, on the basis of the preceding section, the salary assigned by him to any office; but any change made in such salary shall not take effect until the first day of the quarter next following such order, and all orders made assigning or changing salaries shall be made in writing and recorded in his journal and notified to the auditor for the Post Office Department."

Under this legislation it resulted that while under the act of June 22, 1854, postmasters received their compensation based upon each quarterly return, they were in future to be paid salaries for two years, based upon the average amount of receipts as shown by their quarterly returns for two years preceding the 1st day of July, 1864, calculated upon the basis fixed in the act of June 22, 1854.

As this general legislation, however, fixing absolutely the salary of a postmaster for two years in advance upon the basis of his receipts for the two years preceding, would, in rapidly growing communities, work an injustice to postmasters, the revenues of whose offices would be largely increased without any corresponding increase during the two years in their salary, the Postmaster General was authorized "in special cases, upon satisfactory representation, as much oftener as he may deem expedient, to make such readjustment on the basis of the preceding section."

The rule fixed by this legislation was a biennial readjustment of salaries. The exception to this rule was the exercise by the Postmaster General of a discretion "in special cases."

After this act had been in force for nearly two years, the second section was amended by adding the following:

"Provided, That when the quarterly returns of any postmaster of the third, fourth, and fifth class show that the salary allowed is 10 per centum less than it would be on the basis of commissions under the act of 1854 fixing compensation, then the Postmaster General shall review and readjust under provisions of said section."

There is no attempt in this amendment to change the settled rule of biennial readjustment. It requires simply that when the "quarterly returns" at offices of the third, fourth, and fifth class show that the salary allowed upon the average annual compensation of postmasters for the two next preceding years is 10 per cent. less than it would be on the basis of the act of 1854 (which basis is the actual quarterly returns themselves), then the Postmaster General shall adjust upon the quarterly returns.

The substitution of a salary for two years by the act of July 1, 1864, based upon the average returns for two years, in place of commissions upon each quarterly return, was not abandoned by the amendment, but it was provided that where the effect of taking the average of annual compensation of postmasters for the two years preceding was to reduce the compensation of the postmasters 10 per cent. below what it would be by using the eight preceding quarterly returns themselves as a basis the postmaster at such office belonging either to the third, fourth, or fifth class should have the adjustment upon the actual quarterly returns.

This construction leaves in full force the policy inaugurated by the act of July 1, 1864, of paying salaries to postmasters which are fixed for a period of two years in advance, the amendment simply providing that all postmasters of the third, fourth, and fifth class, whose compensation was thus reduced 10 per cent. or more below what they would have received under the act of 1854, shall have their salaries readjusted and fixed upon the basis of the latter act.

This construction of the amendment leaves in full force the discretion conferred upon the Postmaster General to make a readjustment "in special cases upon satisfactory representation as much oftener as he may deem expedient."

I am aware a persistent effort has been made for years to make it appear that it was an imperative duty of the Postmaster General, under the amendment, to examine each quarterly return as made by postmasters of the third, fourth, and fifth class, with a view of ascertaining whether officers of these classes would have their compensation reduced on the basis of the act of 1864 as much as 10 per cent. below the basis of the act of 1854, and, if this result appeared, to make the adjustment quarterly, as though the act of 1864 had not been passed. This construction of the amendment would practically destroy the principles of legislation of which it formed a part as to all officers claimed to be within its provisions, and render biennial adjustments as to them not only unnecessary, but absolutely impossible. It was not the intention of Congress by the amendment of 1866 to repeal any part of the statute of 1864. The latter statute was to stand, the amendment simply securing to officers of the designated classes the right to have their biennial adjustments of salaries made upon the basis of the act of 1854 instead of the act of 1864 whenever they could save 10 per cent. by this course.

If, in fact, there are cases in which it appeared from the quarterly returns or from sworn reports of receipts and business that postmasters of the third, fourth, and fifth class at the biennial readjustments had their salaries fixed under the act of 1864, when, by an adjustment under the act of 1854, 10 per cent. or more would have been added to their salaries, then under the act of 1883 such postmasters are entitled to whatever additional sum they would and should have received under the act of 1854.

In all cases, therefore, in which applications are made for readjustment under the act of 1883, signed by the postmasters or late postmasters of the third, fourth, or fifth classes, or, if deceased, by their executors or administrators, you will take the necessary steps to determine from the sworn returns of receipts and business for readjustment or from the quarterly returns made whether any additional sum is due under section 8 of the act of 1866, as herein construed.

Very respectfully,
W. Q. GRESHAM,
Postmaster General.

10 EXHIBIT "B."

(Form No. 1223, new series, November, 1884.)

POST OFFICE DEPARTMENT, OFFICE OF THE
FIRST ASSISTANT POSTMASTER GENERAL,
SALARY AND ALLOWANCE DIVISION,
WASHINGTON, D. C., ——, 18—.

SIR: In response to your application, dated ——, for a readjustment of — salary —— as postmaster under the provisions of the act approved March 3, 1883, you are informed that by direction of the Postmaster General applications or claims of this nature are being placed in process of examination and review.

The act embraces such claims as postmasters or late postmasters may have for a review of their salaries under the provision of section 8 of the act of June 12, 1866, wherein it shall appear that the salary allowed was ten per centum less than it would have been upon the basis of commissions under the act of 1854.

Briefly stated, the period covered by the act of March 3, 1883, dates from July 1, 1864, to July 1, 1874, and the review will be made on biennial adjustments (*i. e.*, on returns for eight quarters) immediately preceding the biennial adjustment. Claimants should therefore furnish without delay the following information, viz:

First. Period of service as postmaster from —— to ——.

Second. The name of post office, county, and State.

Third. The present address of claimant.

This information must be inclosed in an envelope addressed to the—

First Assistant Postmaster General,
Salary and Allowance Division,
Washington, D. C.,

and bear the inscription, "Claim for review of adjustment of salary." Upon its receipt your claim will be reviewed in its regular order and you will be advised when action is taken.

Very respectfuly,
FRANK HATTON,
First Assistant Postmaster General.

—— ——,
—— ——,
—— ——.

11

EXHIBIT "C."

(Form 1224.)

Post office, ——; State, ——.

Period.	Stamps and envelopes sold.		Letter postage.		News-paper postage.		Box rents.		Salary allowed.		Remarks.
	Dollars.	Cts.	Dollars.	Cts.	Dollars.	Cts.	Dollars.	Cts.	Dollars.	Cts.	
Quarter ending ----, 18–	------	------	----	----	----	----	----	----	----	----	------
" " ----, 18–	------	------	----	----	----	----	----	----	----	----	------
" " ----, 18–	------	------	----	----	----	----	----	----	----	----	------
" " ----, 18–	------	------	----	----	----	----	----	----	----	----	------
" " ----, 18–	------	------	----	----	----	----	----	----	----	----	------
" " ----, 18–	------	------	----	----	----	----	----	----	----	----	------
" " ----, 18–	------	------	----	----	----	----	----	----	----	----	------
" " ----, 18–	------	------	----	----	----	----	----	----	----	----	------
	------	------	----	----	----	----	----	----	----	----	------
Totals............											

12

EXHIBIT C.

Review of the Adjustments of the Salary of P. M. under Acts of 1854, 1864, 1866, *and March* 3, 1883.

From ------------------------, 18--, to ------------------------, 18--

Computation.

Receipts.	Dollars.	Cts.
Stamps------------------------------------	--------	------
Letter postage-------------------------------	--------	------
Newspaper postage----------------------------	--------	------
Box rents------------------------------------	--------	------
Compensation.		
---------- @ 60 per cent.-------------------	--------	------
---------- @ 50 per cent.-------------------	--------	------
---------- @ 40 per cent.-------------------	--------	------
---------- @ 15 per cent.-------------------	--------	------
Box rent-------------------------------------	--------	------
Total compensation for------------------------	--------	------
Average compensation for----------------------	--------	------

Total salary allowed for --
Average " " " --
$---------------—$--------------- =$---------------, or
an increase of ------ per cent.

Ordered that $--------------, being ten per cent. or more than the compensation heretofore allowed the P. M. as shown by the above computation, be allowed in accordance with the requirements of the acts of 1866 and March 3, 1883.

First Ass't P. M. General.

By direction of P. M. General,
----------------------, 188--.

(Form No. 1202, new series, April, 1884.)

Office of the First Ass't P. M. Gen'l, Salary and Allowance Division,
----------------------------, 188--

-- Co.

Brief.

P. M. from --, 18----, to ----------------------------------, 18----, makes application for a review and readjustment of ------ salary as P. M. under the provisions of the act of March 3, 1883.

Address of Claimant.

----

13 **Exhibit C.**

Readjustment, 1890. (Form 1224 A.)

State, ———; post office, ———.

Statement Salary, Basis, Act 1854, *and Salary Paid.*

Biennial term ending—

	June 30, 1866.	June 30, 1868.	June 30, 1870.	June 30, 1872.	June 30, 1874.
Amount of salary, act 1854					
Amount of salary paid					
Amount unpaid salary					

Postmasters.	Term of service.	Amount of salary, act 1854.	Amount of salary paid.	Amount unpaid salary.	

14 *Order for Hearing Before the General Term. Filed June* 14, 1892.

In the Supreme Court of the District of Columbia.

The United States *ex Rel.* Elizabeth Trask, Petitioner,
vs.
John Wanamaker, Postmaster General.
} At Law. No. 33047.

Ordered that the petition for mandamus in the above cause be certified to the court in general term for hearing in the first instance as to whether the rule to show cause shall be issued upon the defendant.

W. S. COX, J.

Order to Show Cause. Filed June 27, 1892.

In the Supreme Court of the District of Columbia.

The United States *ex Rel.* Elizabeth Trask, Petitioner,
vs.
John Wanamaker, Postmaster General.
} At Law. No. 33047.

On reading the petition for the writ of mandamus in the above-entitled cause and upon considering the same it is this 27th day of June, 1892, ordered that the defendant show cause on the 5th day of July, 1892, at 10 o'clock a. m., before the court in general term, why the said writ of mandamus should not be issued as prayed, and that a copy of this order be served on the defendant on or before the 30th day of June, 1892.

By order of the court:

E. F. BINGHAM, *C. J.*

15 *Marshal's Return.*

Served copy of the within rule to show cause and copy of petition in the above-entitled cause on John Wanamaker, Postmaster General, June 29, 1892.

D. M. RANSDELL, *Marshal.*

Motion to Quash Order to Show Cause. Filed July 2, 1892.

In the Supreme Court of the District of Columbia, in General Term.

The United States *ex Rel.* Elizabeth Trask
vs.
John Wanamaker, Postmaster General.
} No. 33047.

Now comes the respondent named in the above-entitled cause, by his attorney, and moves the court to quash the order to show cause heretofore issued by this honorable court, sitting in general term, and bearing date the 27th day of June, 1892; and for cause thereof the respondent says that this court, sitting in general term, so sits in the exercise of appellate jurisdiction only, excepting in certain cases first presented to a justice of said court at special term or at chambers and by such justice ordered to be heard in the general term in the first instance; and he further says that no order for a hearing in the premises in the general term in the first instance has been made by any justice of this honorable court at special term or at chambers; and the respondent therefore says that this
16 court, sitting in general term, has no original jurisdiction in
the premises and that said order was made inadvertently and without authority of law.

C. H. ARMES,
Attorney for Respondent.

Demurrer. Filed July 8, 1892.

In the Supreme Court of the District of Columbia, in General Term

THE UNITED STATES *ex Rel.* ELIZABETH TRASK
vs.
JOHN WANAMAKER, Postmaster General.
} No. 33047.

Demurrer.

The respondent says that the amended and verified petition o the above-named relator is bad in substance.

C. H. ARMES,
Attorney for Respondent.

Note 1. One of the matters to be argued is that, it appearing affirmatively from the said petition that the Postmaster General has not, as a matter of fact and law, readjusted relator's salary as postmaster and allowed her the sum of $2,206.19, claimed by her for the period named in said petition, the respondent cannot lawfully report to the auditor of the Treasury for the Post Office Department that the said sum of $2,206.19 is due the relator, as specifically prayed by her in said petition.

Note 2. Another matter to be argued is that the petition of the relator shows, not that the respondent refuses to act upon her application to readjust her salary, but only that he refuses to read-
17 just it in accordance with a certain construction, set forth in said petition, of the laws governing the readjustment of certain postmasters' salaries, and that the duty required of him in readjusting the salaries of said postmasters under the laws referred to in said petition is not a mere ministerial duty, but requires of him the exercise of his sound judgment and discretion.

Order Denying Petition for Writ of Mandamus. Filed October 24, 1892.

In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA on the Relation of ELIZABETH TRASK
vs.
JOHN WANAMAKER, Postmaster General.
} No. 33047. Law.

This cause having been heard here in the first instance upon the petition of the relator for a writ of mandamus and the demurrer of the respondents thereto and the arguments of counsel for the respective parties and considered by the court, it is this 24th day of October, 1892, ordered by the court in general term that said demurrer be, and the same is hereby, sustained, and that the said petition be, and the same is hereby, dismissed with costs.

E. F. BINGHAM, *C. J.*

18 *Opinion.*

Supreme Court of the District of Columbia, in General Term.

THE UNITED STATES *ex Rel.* ELIZABETH TRASK
v. At Law. No. 33047.
JOHN WANNAMAKER, Postmaster General.

Mr. Harvey Spalding, for petitioner; Mr. C. C. Cole, for Postmaster General.

Mr. Justice JAMES delivered the opinion of the court:

This is a petition for a writ of mandamus. The relator's petition states substantially the following case:

She became postmaster at Emporia, Kansas, on October 1, 1864, and so continued to and including June 30, 1870. During the whole of the biennial term ending June 30, 1866, the returns of the office paid to the United States amounted to $1,567.98, the commissions on which, under the act of June 22, 1854, if allowed, would have amounted to $863 99. The salary allowed for the seven quarters of this period during which the relator was postmaster was $580. During the biennial term ending June 30, 1868, the returns of the office amounted to $2,230.73, besides $73 box rents, commissions upon which, under the said act of 1854, if allowed, would amount to $1,270.37, while relator was paid a salary for the same period of $800. For the biennial term ending June 30, 1870, the returns of the office amounted to $6,312.53, besides $230 box rents, upon which commissions. under said act of 1854, if allowed, would amount to $3,139.33, while the relator was paid a salary for the same biennial term of $1,580.

19 The petitioner thereupon claims that it became the duty of the Postmaster General, under section 8 of the act of June 12, 1866, to readjust said salary at the end of each biennial term, because the same was ten per cent. less than it would have been in commissions under said act of 1854, and to allow the difference between the salary paid and said commissions.

The relator further sets forth that on June 9, 1883, and February 17, 1884, the Postmasters General of those dates issued orders in which they construed the statutes relating to readjustment of salaries; that they caused to be entered upon the forms described in those orders the sum of $1,567.98 as the amount of the postal receipts at the relator's post office during the biennial term ending June 30, 1866, and the salary of said office for the whole of the said term, computed on the basis of the act of 1854, as $863.99, and the relator's proportion thereof for seven quarters of that term as $755.99; that they caused to be entered on said forms the sum of $2,230.73 as the amount of relator's postal receipts for the biennial term ending June 30, 1868, and the sum of $1,270.37 as relator's salary for the same term, and the sum of $6,312.53 as the amount of relator's postal receipts for the biennial term ending

June 30, 1870, and the sum of $3,139.83 as the salary of the relat
for the same term; also that the Postmaster General prepared an
transmitted to the Committee on Post Offices and Post Roads a stat
ment of the total amount of the relator's readjusted salary due an
unpaid for the whole time between October 1, 1864, and June 3
1870, showing the amount so due the relator to be $2,175.57, bu
afterwards withdrew that statement, and an error therein was co
rected and an entry was made showing the correct amount due th
relator to be $2,206.19.

20 The relator states that the Postmaster General has refuse
to report to the auditor for the Post Office Department f
credit in the relator's account the amount found due upon sai
statement, and concludes with the following prayer:

"The relator therefore prays that a writ of mandamus may issu
from this honorable court, addressed to John Wannamaker, Pos
master General, commanding him to report to the auditor of th
Treasury for the Post Office Department that upon an examinatio
of the relator's quarterly returns as postmaster at Emporia, Kansa
during her terms of service between October 1, 1864, and June 3
1870, and a recomputation of her salary as required by section 8 o
the act of June 12, 1886, and the act of March 3, 1883, it is foun
that the additional salary, $2,206.19, is due her, of which she is en
titled to be credited in her account."

To this petition the respondent demurred. The case was certifie
to this court to be heard here in the first instance, and a rule to sho
cause was issued.

In order to determine the validity of the relator's claim we mus
consider the acts of June 22, 1854, of July 1, 1864, of June 12, 186
and of March 3, 1883.

The act of June 22, 1854, provided that postmasters should b
compensated by commissions on the amount of postal receipts a
their respective post offices, varying in percentage according to th
extent of the receipts. The act of July 1, 1864, established five classe
of postmasters. To the first class were asssigned those whose salaries
as determined by the rule laid down in another part of the act, shoul
be not less than $3,000 nor more than $4,000; to the second thos
whose salaries should be not less than $2,000 nor more — $3,000
to the third those whose salaries should be not less than $1,000 no
more than $2,000; to the fourth those whose salaries shoul
21 be not less than $100 nor more than $1,000, and to the fift
those whose salaries should be less than $100. The rule b
which the salary of a particular postmaster should be determine
was provided as follows: "To officers of the first, second, and thir
classes shall be assigned salaries in even hundreds of dollars as nea
as practicable in amount the same as but not exceeding the averag
compensation of the postmasters thereof for the two years next pre
ceding, and the officers of the fourth class shall be assigned sever
ally salaries in even tens of dollars as near as practicable in amoun
the same as but not exceeding such average compensation for th
two years next preceding," etc.

The time when the salary system shall take effect was provide by the 3d section of the act as follows: "Salaries of the first, second, and third classes should be adjusted to take effect on the first day of July, 1864, and of the fourth and fifth classes at the same time, or at the commencement of a quarter as nearly as practicable thereafter."

The next preceding section (2) provided the readjustment of salaries in the following words:

"The Postmaster General shall review once in two years and in special cases, upon satisfactory representation, as much oftener as he may deem expedient and readjust, on the basis of the preceding section (namely, sec. 1) the salary assigned by him to any office; but any change made in such salary shall not take effect until the first day of the quarter next following such order, and all orders made assigning or changing salaries shall be made in writing and in his journal and notified to the auditor of the Post Office Department."

The effect of sections 2 and 3 was that the biennial terms should date from July 1, 1864. By this reference to "the basis of the preceding section" (namely, section 2) it was required that the
22 readjusted salary should be "as near as practicable in amount the same as, but not exceeding," the average compensation by commission on postal receipts for the two years next preceding the order of readjustment. For example, in case of readjustment of the salary which had been allowed for the term ending June 30, 1866, the postal receipts for that term would be the basis of computation, and then the salary so ascertained would, as provided by section 2, apply to the term ending June 30, 1868.

We come now to the statute on which chiefly the relator's claim is founded by her. Section 8 of the act of June 12, 1866, enacted that the second section of the act of 1864 should be amended by adding the following words: "Provided, that when the quarterly returns of any postmaster of the third, fourth, or fifth class show that the salary allowed is 10 per centum less than it would be on a basis of commission under the act of 1854, fixing compensation, the Postmaster General shall review and readjust under the provisions of said section." This, of course, meant the provisions of section 2 of the act of July 1, 1864, which referred to section 1 of the same act.

The relator construes this amendment as intending that whenever a deficiency of 10 per cent. is found to have occurred in an allowance of salary, that deficiency shall be made up to him as further compensation for the past biennial term in which the deficiency was developed. Her petition contains the following allegation, or rather claim: "That it became the duty of the Postmaster General, under section 8, act June 12, 1866, to readjust said salary at the end of each biennial term, because the said salary was 10 per cent. less than it would have been under said act of 1854, and to allow her the difference between the salary paid and said commissions." We understand the relator's contention to be that this process of supplying the deficiency is to be applied to
23 the biennial term from June 30, 1864, to June 30, 1870.

We do not so construe the act of 1866. We hold that
merely defines the occasion which shall make imperative are adju
ment of the salary to be paid after that date. From that time t
occasion for readjustment was to be the ascertained fact that t
salary for the biennial term just ended had been 10 per cent. le
than compensation by commissions would have been. In the absen
of clear indications to the contrary every statute is prospective, an
this amendment shows as little indication of a contrary intent
did the section which it amended. It is to be observed that this a
was passed nearly three weeks before the biennial readjustme
of June 30 was to be made. It determined, therefore, the occasio
the state of facts, which should require a readjustment of salary f
the biennial term from June 30, 1866, to June 30, 1868, and for su
ceeding biennial terms. The basis of readjustment remained mea
time just what it had been before. In express terms the act of 18
declared that the readjustment in these cases of 10 per cent. of diffe
ence between the allowed salary and the commissions standa
should be made under the provisions of section 2 of the act of Ju
1, 1864, and one of those provisions was that the readjustment shou
apply only to the salary for the term next following the order of r
adjustment. The only effect, therefore, of the amendment was
determine the occasion or state of facts which should justify any r
adjustment. The important point, however, is that the act of 18
was a strictly prospective statute, and had reference only to th
salaries to be allowed to the incumbents of the several post offic
after that time. It did not intend to operate on salaries which ha
been allowed for terms which had expired.

We have next to consider the effect of the act of March 3, 188
The statute was in the following words:

24 "That the Postmaster General be, and he is hereby, autho
ized and directed to readjust the salaries of all postmasters an
late postmasters of the third, fourth, and fifth classes under the class
fication provided in the act of June 1, 1864, whose salaries have n
heretofore been readjusted under the terms of section 8 of the act
June 12, 1866, who made sworn returns of receipts and business fo
readjustment of salary to the Postmaster General, the First Assis
ant Postmaster General, or the Third Assistant Postmaster Genera
or who made quarterly returns in conformity to the then existin
laws and regulations, showing that the salary allowed was 10 pe
centum less than it would have been upon the basis of commission
under the act of 1854, such readjustment to be made in accordanc
with the mode presented in section 8 of the act of June 12, 186
and to date from the beginning of the quarter succeeding that i
which such sworn returns of receipts and business returns wer
made."

In this statute Congress, for the first time, provided for readjust
ment of salaries for terms which had expired, and in this proceed
ing the cases of late as well as incumbent postmasters were to b
included; but it is to be observed that this act refers only to a read
justment of salaries under the act of 1866. We think that it i
clear that it was not intended to operate upon a salary for any bien

nial term not included in the operation of that act, and we have already held that the act of 1866 was only prospective. The act of 1883 did not propose to alter the scope of the act of 1866; it proposed only to enforce its application to salaries which had not theretofore been readjusted. It follows that salaries for the term from June 30, 1864, to June 30, 1866, could not be readjusted under this statute.

The prayer, therefore, for a writ commanding the Postmaster General, "upon an examination of the relator's returns during
25 her term of service between October 1, 1864, and June 30, 1870, to report to the auditor of the Treasury for the Post Office Department that it is found that the additional salary, $2,206.29, is due her, for which she is entitled to be credited in her account," cannot be granted.

Some other questions were discussed at the argument, but it is unnecessary to decide them on this demurrer.

The writ is denied.

26 Supreme Court of the District of Columbia, in General Term, November 2, 1892.

UNITED STATES on Relation of ELIZABETH TRASK
vs.
The Postmaster General, JOHN WANAMAKER.
} 33047. Law. Cal. 186.

Ordered, on the application of Harvey Spalding, counsel for relator, that the penalty of appellant's (relator's) bond under writ of error ordered issued by Associate Justice Henry B. Brown, of the Supreme Court of the United States, be, and hereby is, fixed at the sum of two hundred dollars.

27 In the Supreme Court of the District of Columbia, the — Day of November, 1892.

Filed Nov. 8, 1892. J. R. Young, clerk.

THE UNITED STATES *ex Rel.* ELIZABETH TRASK
vs.
JOHN WANAMAKER, Postmaster General.
} No. 33047.

Know all men by these presents that we, Elizabeth Trask, Harvey Spalding, and James H. Spalding, are bound unto the above-named John Wanamaker in the sum of two hundred dollars ($200), to be paid to the said John Wanamaker, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 5th day of November, 1892.

Whereas the above-named Elizabeth Trask has prosecuted a writ of error to the Supreme Court of the United States to reverse the

judgment rendered in the above suit by the said supreme court of th
District of Columbia :

Now, therefore, the condition of this obligation is such that if tl above-named Elizabeth Trask shall prosecute her said writ of erro to effect and answer all damages and costs and if she shall fail t make good her plea, then this obligation shall be void ; otherwis the same shall be and remain in full force and virtue.

ELIZABETH TRASK. [SEAL.]
HARVEY SPALDING. [SEAL.]
JAMES H. SPALDING. [SEAL.]

Sealed and delivered in presence of—
Witness- to Elizabeth Trask'- signature :
CHAS. FLETCHER,
JAMES LAWRENCE,
As to Elizabeth Trask.

Sealed and delivered in presence of—
E. T. PRITCHARD,
A. S. CLARKE,
As to Harvey Spalding and James H. Spalding.

Approved the 8th day of November, 1892.

A. B. HAGNER,
Asso. Justice, S. C. D. C.

28 UNITED STATES OF AMERICA, } *ss :*
District of Columbia, }

I, John R. Young, clerk of the Supreme Court of the District o Columbia, do hereby certify the foregoing to be a full, true, an correct transcript of the record of all the proceedings had in sai court in the cause wherein The United States *ex rel.* Elizabeth Tras is plaintiff and John Wanamaker, Postmaster General, is responde as the case remains upon the files and records of said court.

In testimony whereof I hereunto subscrib my name and affix the seal of said cour at the city of Washington, this 9th day o November, A. D. 1892.

Seal Supreme Court
of the District of
Columbia.

JOHN R. YOUNG, *Clerk.*

29 *Writ of Error.*

UNITED STATES OF AMERICA, *ss :*

The President of the United States to the chief justice and justice of the Supreme Court of the District of Columbia, Greeting :

Because in the record and proceedings, as also in the rendition o a judgment in a plea which is in the said court, before you, betwee The United States *ex rel.* Elizabeth Trask and John Wanamake Postmaster General, being No. 33047, at law, a manifest error hat happened, to the great damage of the said relator, as by her com plaint appears, and it being fit that the error, if any hath happenec should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf:

Therefore you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 3d day of November, in the year of our Lord 1892, and of the Independence of the United States the one hundred and seventeenth.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG,
Clerk of the Supreme Court of the District of Columbia.

30 *Citation to the Supreme Court of the United States.*

The United States of America to John Wanamaker, Postmaster General, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein The United States *ex rel.* Elizabeth Trask is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected so that speedy justice be done the parties in that behalf.

Witness Edward F. Bingham, chief justice of the said supreme court of the District of Columbia, in the year of our Lord one thousand eight hundred and ninety-two.

E. F. BINGHAM,
Chief Justice.

Service of the above citation acknowledged this third day of November, A. D. 1892.

C. H. ARMES,
Attorney for Defendant in Error.

Endorsed on cover: Case No. 15202. District of Columbia supreme court. Term No., 1232. The United States *ex rel.* Elizabeth Trask, plaintiff in error, *vs.* John Wanamaker, Postmaster General. Filed November 11, 1892.

Office Supreme Court U. S.
FILED.
DEC 10 1892
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

Term No. 1232.

THE UNITED STATES, Ex Rel. ELIZABETH TRASK,
Plaintiff in Error,
vs.
JOHN WANAMAKER, Postmaster General.

In Error to the Supreme Court of the District of Columbia.

BRIEF FOR THE PLAINTIFF IN ERROR.

HARVEY SPALDING,
Attorney for the Plaintiff in Error.

WASHINGTON, D. C.
December 5th, 1892.

McQUEEN, PR.

Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES EX. Rel. ELIZABETH TRASK, Plaintiff in Error,
vs.
JOHN WANAMAKER, Postmaster-General.
Term No. 1232.

In Error to the Supreme Court of the District of Columbia.

Brief for the Plaintiff in Error.

Statement of the Case.

The plaintiff in error was a fourth-class postmaster at Emporia, Kansas, in each of the biennial terms ended June 30th, 1866, June 30th, 1868, and June 30th, 1870.

Her quarterly returns for the biennial term ended June 30th, 1866, showed that the commissions on the basis of the Act of 1854, fixing compensation of postmasters, amounted to $755.99, and also showed the allowed salary to be for that time, $580. Her returns also showed the commissions for the biennial term ended June 30th, 1868, to be $1,270.37, and the allowed salary to be $800; and they also showed the commissions for the biennial term ended June 30th, 1870, to be $3,139.83, and the allowed salary to be $1,580 (Record, pages 1 and 2).

On the 12th June, 1866, the law making power added to Section two of the Act of July 1st, 1864 (under the first section of which statute the $580 was allowed to the plaintiff in error for the term ended June 30th, 1866, and under the second section of which statute, independent of section 8 of the Act of June 12th, 1866, the $800 was allowed for the term ended June 30th, 1868, and the $1,580 allowed for the term ended June 30th, 1870), the following requirements:

"Provided that when the quarterly returns of any postmaster of the third, fourth or fifth class show that the salary allowed is ten per cent. less than it would be on a basis of commission under the act of 1854, fixing compensation, then, the Postmaster-General shall review and readjust, under the provisions of said section (14 U. S. Statutes at Large, 60)."

No additional compensation was allowed the plaintiff in error by the Postmaster-General for either of the biennial terms of service mentioned, notwithstanding the fact that in the first term the salary allowed is more than 23 per cent. less than the commissions, and the salary allowed in the second term is more than 37 per cent. less than the commissions, and the salary allowed in the third term is more than 98 per cent. less than the commissions, the Postmaster-General having refused to make any readjustment of the plaintiff's salaries for either of the said terms. (Record, page 2.)

In consequence of this refusal to readjust the plaintiff's salary, proceedings have been carried on ever since then, before the P. O. Department, before the Courts and before Congress, in order to secure the readjustment of the plaintiff's salaries, and the payment to her of a salary equal to the commissions, shown by her returns in each of the biennial terms mentioned. The Postmaster-General, having refused to make this readjustment of salaries during her incumbency, and afterwards, she brought suit in the Court of Claims, and her first suit in that court failed, by reason of the decision of this court, of the test case of the United States, Appt., *vs.* J. K. McLean (95 U. S., 750, 753). The point then decided by this court was, that—

"The law imposes no obligation upon the Government to pay an increased salary, unless a readjustment has preceded it. * * *

"If the Executive officer failed to do his duty, he might have been constrained by a mandamus. But courts can not perform executive duties or treat them as performed, when they have been neglected. They can not enforce rights which are dependent for their existence, upon a prior performance by an executive officer of certain duties he has failed to perform."

This decision made it indispensable to the enforcement of the rights of the postmasters, including the plaintiff, to obtain a legislative mandate, which should require the Postmaster-General upon application to readjust the salaries of all the postmasters of the classes specified in the act of 1866, whose returns showed the salary allowed to be ten per cent. less than it would be upon the basis of commissions, who might apply to the Postmaster-General therefor. The law-making power enacted this mandate on the 3d of March, 1883 (22 Statutes, page 487).

The language of this mandate is as follows:

"That the Postmaster-General be and he is hereby authorized and directed to readjust the salaries of all postmasters, and late postmasters of the third, fourth and fifth classes, under the classification provided in the act of July 1st, 1864, whose salaries have not heretofore been readjusted under the terms of section 8, of the Act of

June 12, 1866 * * * who made quarterly returns in conformity to the then existing laws and regulations, showing that the salary allowed, was ten per cent. less than it would have been upon the basis of commissions under the act of 1854, such readjustment to be made in accordance with the mode presented in section 8, of the Act of June 12, 1866, and to date from the beginning of the quarter succeeding that in which such * * * quarterly returns were made."

Following the enactment of this mandate of 1883, the Postmaster-General proceeded to comply therewith. His first act was taken on the 9th of June, 1883, in an order made public, in which he declared that this act of March 3, 1883—

"Has satisfied me that the purpose of this legislation is to require the Postmaster-General, in all cases in which any one of his predecessors has failed to comply with the provisions of section 2, of the Act of July 1st, 1864, as amended by section 8, of the act of June 12, 1866, requiring a readjustment of salaries in offices of the third, fourth and fifth classes, to proceed to make such adjustment under the terms of that section * * *

"The rule fixed by this legislation (referring to the Act of July 1st, 1864, before the enactment of the Act of June 12, 1866), was a biennial readjustment of salaries." * * *

After this act had been in force for two years, the second section was amended by adding the following: [Quoting section 8 of the Act of June 12, 1866.]

There is no attempt in this amendment to change the biennial rule of readjustment. It requires simply that when the quarterly returns, at offices of the third, fourth and fifth class, show that the salary allowed upon the average annual compensation of postmasters for the two next preceding years, is ten per cent. less than it would be on the basis of the Act of 1854 (which basis is the actual quarterly returns themselves), then the Postmaster-General shall adjust upon the quarterly returns.

The substitution of a salary for two years, by the Act of July 1st, 1864, based upon the average returns for two years, in place of commissions upon each quarterly return, was not abandoned by the amendment, but it was provided that when the effect of taking the average compensation of postmasters for the two years preceding, was to reduce the compensation of postmasters ten per cent. below what it would be by using the eight preceding quarterly returns themselves, as a basis, the postmaster at such office belonging either to the third, fourth or fifth class should have the adjustment upon the actual quarterly returns.

This construction leaves in full force, the policy inaugurated by the Act of July 1st, 1864, of paying salaries to postmasters which are fixed for a period of two years in advance, the amendment simply providing that all postmasters of the third, fourth and fifth class, whose compensation was thus reduced ten per cent. or more below what they would have received, under the Act of 1854, shall have their salaries readjusted and fixed upon the basis of the latter act It was not the intention of Congress, by the amendment of 1866, to repeal any part of the statute of 1864. The latter statute was to stand, the amendment simply securing to officers of the designated classes, the right to have their biennial adjustments of salaries made upon the basis of the Act of 1854, whenever they could save ten per cent. by this course.

If, in fact, there are cases in which it appeared, from the quarterly returns that postmasters of the third, fourth and fifth class had their salaries fixed under the Act of 1864, when by an adjustment under the act of 1854, ten per cent. or more would have been added to their salary, then under the Act of 1883, such postmasters are entitled to whatever additional sum they would, and should have received, under the Act of 1854.

Then follows the order of W. Q. Gresham, Postmaster-General, to the First Assistant Postmaster-General, to proceed and make the readjustments of salaries by the rule thus laid down.

It will be noted, that in two or more instances, the Postmaster-General refers to the salary allowed, pursuant to the Act of July 1st, 1864, independently of the amendment of 1866, to be the salary allowed upon the average annual COMPENSATION of postmasters for the two next preceding years.

This is strictly true of the adjustment of the postmasters salaries under the Act of July 1st, 1864, because the actual compensation of postmasters for the two years preceding July 1st, 1864, was taken as the basis of the allowed salary for the two succeeding years. That compensation was the actual commissions. As to the readjustment of salaries at postoffices, subsequent to the first adjustment of July 1st, 1864, the word "compensation" when applied as the basis, for establishing salaries at postoffices for the succeeding two years, is inaccurate. The basis for the first adjustment of salaries in all postoffices in the United States was the actual commissions of the two years antecedent and the same basis for the subsequent readjustment, required the actual commissions to be taken for the two years antecedent. The basis of the readjustment of salaries at postoffices, made on the first of July, 1866, and on the first of July, 1868, and on the first of July, 1870, was not the compensation of the postmaster for the two years antecedent, but what would have been the compensation if the commissions had been paid. This is the plain intent and meaning of General Gresham.

The next act of the Postmaster-General, had in compliance with the acts of 1866 and 1883, was the publication by him on February 17th, 1884: "That in all cases in which it appears from a biennial readjustment of salaries of postmasters of the third, fourth and fifth classes, that they received ten per cent. or more less than they would have received in commissions under the Act of 1854, they are now entitled, under the Act of March 3d, 1883, to the difference between what was paid them and what they would have received as commissions under the Act of 1854." (Record, page 3.)

This was followed by the continuous publication of Department letter form No. 1223, which contained the following announcement:

> "The act embraces such claims as postmasters, or late postmasters may have for a review of their salaries under the provision of section 8, of the Act of June 12, 1866, wherein it shall appear, that the salary allowed was ten per cent. less than it would have been upon the basis of commissions, under the act of 1854.
>
> "Briefly stated the period covered by the Act of March 3, 1883, dates from July 1st, 1864, to July 1st, 1874, and the review will be made on biennial adjustments (*i. e.* on returns for eight quarters) immediately preceding the biennial adjustment." (Exhibit "B," page 9.)

Following this, the Postmaster-General prepared the three forms to carry into effect the rule of the statutes of 1866, and 1883, as clearly and as emphatically laid down in the order of June 9, 1883, printed on pages 6, 7, 8 and 9 of the Record, the publication of February 17, 1884, printed on page 3 of the Record, and in Department letter form No. 1223 which will be found on page 9 of the Record.

Every act in regard to the readjustment of the salary of the plaintiff, in accordance with this published rule of the law, has been had, except a report of the result of the computation made of the plaintiff's salary, to the Auditor for the P. O. Department. The performance of all these acts, save this, is admitted by the defendant in error, in the proceedings in the court below.

Thus, the exact amount of the increased salary due the plaintiff, under the statutes of 1866 and 1883, was in fact ascertained by the Postmaster-General upon application for readjustment presented to the Postmaster-General on the 8th day of March, 1884, but payment of the same was prevented by his refusal to report the same to the Auditor for that purpose. The plaintiff deemed herself entitled to a judgment for the amount, because all the steps necessary to determine the same had been taken by him, and suit was accordingly brought in the Court of Claims. By the decision of that court, from which there is no appeal, it has been determined, that the action of the Postmaster-General does not constitute a readjustment of the plaintiff's salary, necessary to be made in order to entitle the plaintiff to a judgment, under the decision of this court in the first McLean case.

The present proceeding is therefore necessary to enforce the property rights of the plaintiff to the salaries to which she is by the act of 1866 and 1883, entitled through the Postmaster-General's readjustment. The court below refused to grant the writ of mandamus prayed for (Record, page 19), and accordingly a writ of error to the Supreme Court of the District of Columbia was allowed by this court on the third day of November, 1892. (Record, pages 20, 21.)

Assignment of Error.

The refusal of the court below to grant the writ of mandamus prayed for is an error.

Argument.

From the organization of the Government it was made the duty of the Auditor for the P. O. Department, to ascertain, by exact rates of commissions, the compensation of every postmaster in the United States, upon each quarterly return of postages. That officer could not deviate one cent from the rule of the law, and it was his duty to credit to the postmaster in his account, the exact compensation thus ascertained. Thus, the law continued till July 1st, 1864. Another change was made on the first day of July, 1874 by readopting the same method that was in force prior to July 1st, 1864, as to all non-presidential postoffices. At the present time the non-presidential postoffices number over 60,000, and the Auditor is required by law, to ascertain and credit exact commissions on the postages returned each quarter. The Postmaster-General is required by law, to ascertain and fix, with equal exactness, the compensation of every postmaster at every Presidential office. He can not vary from the rule of the law to the extent of one cent.

On the first day of July, 1864, at the instance of the Postmaster-General, there was substituted for the American system of exact compensation on each quarterly return, the English system of fixed salaries, established at every postoffice in the United States. The Postmaster-General was author of this system in all of its parts. A system of established salaries at postoffices required a basis of ascertaining the salaries and a term during which they should continue. As there could be no proper basis for establishing such salaries, except the known receipts of the respective offices, it was provided that this basis should be the average commissions for a term of two years, antecedent to the term for which the salary was established and it was provided that the term, during which these salaries should remain, should be limited to two years. This system was a new and untried system in this country, and accordingly, what its effects would be, seemed not to have been understood by Congress when it was enacted. It is to be noted that after the enactment of this system, no salary could be credited to a postmaster except by equal quarterly installments in each quarterly return, as the Auditor was directed by the Postmaster-General. The returns were lodged with the Auditor for the P. O. Department, and the ascertainment of the compensation was vested in the Postmaster-General. Upon consideration, the vices of this un-American system will plainly appear. Up to July 1st, 1864, as stated, every postmaster was compensated by exact commissions, in exact proportion to the postages returned each quarter. On the first of July, 1864, all the postmasters in the United States, whose business rapidly increased, were shocked by a refusal to pay them compensation in proportion to their receipts. Without doubt, at the same time, all the postmasters in the United States, whose business decreased, were gratified, because they received compensation measured by the larger business of the antecedent term in excess of their current business. Under such circumstances, loud complaints from thousands of postmasters, at offices increasing in business, were made with one accord. And these complaints in effect were against the English system of compensation imposed upon them by the Postmaster-General. In such cases, what was the effect of this system? Take a case where on nominal receipts of a postoffice two years prior to July 1st, 1866, the salary was established at $10 per year for the succeeding two years, at which postoffice, by reason of the construction of a railroad, or the discovery of valuable mines, the postages so increased that they amounted to $500 per year. This salary system deprived the postmaster in such a case of $490 a year of his actual earnings, by the substitution of $10 per year compensation, for actual earnings amounting to $500 per year. It is well known in the United States that there is a large increase of postal receipts each year.

This natural increase, for illustration, may be stated at 8 per cent. each year, so that, if the total receipts for the year ending June 30, 1867, be stated at $25,000,000, the receipts for the year ending June 30, 1868, will be $27,000,000, being for the two years $52,000,000, being an average of $26,000,000 per year. Now the salary system undertook to compensate postmasters, for the two years between July 1st, 1868, and July 1st, 1870, in such a case, upon the basis of the collection of an average of $26,000,000 per year for the two years prior, while the law of increase would make the revenues for the year ending July 1st, 1869, $29,160,000 and for the year ending June 30, 1870, $31,492,800, making a total for both years of $60,652,800. In other words, the English system applied to the compensation of American postmasters in such case would collect $8,652,800 without any cost whatever. And beyond all this, it must be considered, that many thousands of postmasters at offices decreasing in receipts, would receive compensation amounting to hundreds of thousands of dollars above their actual earnings. Thus, the effect of this system taxed the postmasters at offices increasing in business several millions of dollars, in order to accomplish two results, first, a large profit to the postmasters at postoffices decreasing in business; second, to secure to the United States several millions of dollars profits on the collection of the whole revenues of the Department. This, in effect, amounted to a robbery of Peter in order to pay to Paul and Uncle Samuel, profits.

It was absolutely impossible for such a system as this to be carried into full effect in the United States. Complaints by the thousands poured into Congress, and Congress applied the adequate remedy of the mandate contained in section 8, of the Act of June 12, 1866. After that enactment, no postmaster in the United States paid less than $2,000 per year, could be lawfully deprived of more than ten per cent of his actual earnings, as measured by the commission act of 1854.

Method of the Remedy Contained in the Act of 1866.

It will be seen, that in terms, this act requires a readjustment of the salaries of the postmasters, if the returns show the salary allowed to be ten per cent. less than the commissions. That is, a rerdjustment is ordered because that fact appears from the returns. It is to be noted, that nothing in this act touches or changes the basis for the establishment of salaries at postoffices, or the term for which they were established under the act of July 1st, 1864. It is plain that the original act of July 1st, 1864, remained in full force after the act of June 12th, 1866, was passed. It is plain that there could be no deficient salaries of postmasters, to be readjusted at all, unless the act of July 1st, 1864, had first full effect. The deficient salaries could not exist in any other way than through the operation of the act of July 1st, 1864, and the scope of that act, in each case, covered a term of two years, during which term only equal quarterly installments could be credited to any postmaster, no matter how much, by increase of business, the commissions exceeded the quarterly installments of salaries allowed. To interpose at the beginning of such term, or at any time within that term, by the payment of actual commissions, instead of the quarterly installment of salaries, would be, as General Gresham says in his analysis of the laws, to do away with the salary act of 1864 by the substitution of the commission act of 1854, by crediting varying commissions on each quarter's returns. It is plain, that on account of the varying returns as to postages within the term, the fact, as to the allowance of a salary ten per cent. less than the commissions would not appear until the end of the term, and if such fact did appear at the end of the term, it is manifest that such fact brought the case within the operation of the act of 1866, and there is no power to take it out of the operation of that act. Thus the act of 1866 was a return by Congress to the American method of compensating postmasters in exact proportion to the postages collected by them, as to all the cases in which losses were incurred by operation of the act of 1864, described in the act of 1866.

The remedial act of 1866 was an indispensable act of justice on the part of Congress, rendered indispensable by the act of July 1st, 1864, which was framed by the Postmaster-General. This action of Congress was had without consulting the Postmaster-General, at whose instance the prior act was passed by Congress. Congress thus, in effect, adjudged that the statute, whose author was the Postmaster-General was defective, and applied the necessary remedy In this way, the remedial act of 1866 had no friends in the Post-Office Department. It was not complied with. In the same way, the remedial act of March 3d, 1883, was the act of Congress, and its enactment was opposed by the whole influence of the Postmaster General. When the act of March 3d, 1883 was passed, it had long been known in that Department what was the requirement of the act of 1866; because every readjustment actually made of deficient salaries of Postmasters, between 1866 and 1874, had been made by the well-known rule of that act, and the well-known rule of that act required every such readjustment of salary to be made on the basis of the commission act of 1854. Thus, when the Postmaster-General was required to take action, by the act of 1883, he could do nothing else lawfully, than to affirm and follow, the well-known rule of that law, and accordingly, every order made, every circular made public, in regard to the law, and every form prepared to carry it into execution, affirms, the one and only rule of that law. Hence, the defendant Postmaster-General can not deny the right of the plaintiff to the readjustment of her salary by the rule prayed for, without abrogating and denying his own official acts, had in conformity to the requirements of the law. So it is that the record presents no such denial, for the Postmaster-General had no answer to make to the plaintiff's petition. So also it is, that the denial of the plaintiff's right is confined to the anomalous construction, so called, of the act of 1866, by the court below, which construction is set forth on page 18 of the Record.

That court, as to the act of 1866, puts its construction upon it in the following words: "We hold that it merely defines the occasion which makes imperative an adjustment of the salary to be paid after that date. From that time the occasion for readjustment was to be the ascertained fact that the salary for the biennial term just ended, had been ten per cent. less than compensation by commissions would have been * * * It determined, therefore, the occasion, the state of facts which should require a readjustment of salary for the biennial term, from June 30, 1866, to June 30, 1868, and for succeeding biennial terms. The basis of readjustment remained just what it had been before * * * The only effect therefore, of the amendment, was to determine the occasion or state of facts which should justify any readjustment."

That is, in not wholly plain terms, the court below affirms that the act of June 12, 1866, does not require the readjustment of any salary of any postmaster, but that it abrogates for the most part the rule for re-establishment of the salaries at postoffices provided for by the Act of July 1st, 1864, in this, that while the Act of July 1st, 1864, required, absolutely, a re-establishment of the salaries of all postoffices in the United States at the beginning of every two years, for the succeeding two years, the Act of 1866 confines such changes in office salaries to the state of facts described in the Act of 1866, namely, a loss of ten per cent. to the postmaster in the salary allowed as shown by the quarterly returns in the term of two years then ended, for if the Act of 1866 was enacted simply to determine the state of facts which should justify *any* readjustment, and if the basis of readjustment remained just what it had been before (using the language of the court below) and such readjustment, when made was to apply only to the term succeeding, then it is manifest that no changes in office salaries could lawfully be made, after the passage of the Act of June 12, 1866, except such changes as increased the salary for the succeeding term ten per cent. or more, on the basis of an increase of commissions of ten per cent. or more, over and above the salary allowed in such preceding terms.

No officer of the Post-office Department ever dreamed of such an intent of the act of 1866, as will be demonstrated upon opening the registers of postmasters' salaries published in the Blue Books of 1865, 1867, 1869, 1871 and 1873. Therein is made public the fact that the Postmaster-General changed the established salaries of every postoffice in the United States every two years as he was required to do by the act of July 1st, 1864, regardless of the fact, as to whether the postmasters in the preceding term lost or gained in the salary allowed by the method prescribed by the act of 1864 previous to the enactment of the act of 1866. The Postmaster-Generals are thus shown to have known that no such intent could be attributed to the act of 1866, for it would be absurd to say that the Postmaster-General re-established the salaries at all the thousands of postoffices in the United States, when the statute prohibited any such readjustments except as to a specified few amongst that great number. Thus, it appears, that after the Act of June 12, 1866, had been in force more than twenty-six years, it was left to the court below to discover this strange intent of the law in manifest conflict with the whole action of the Postmaster-General during that time, and in conflict with the intent of that act as accepted by the law making power as well as by the executive. This same subject has been pending, also, in the courts ever since 1873, and no court, which has heretofore passed upon this question, except the court below in this case, has ever attributed any such intent to the Act of 1866.

It transcends belief that after postmasters had been compensated for generations by the exact commissions upon the postages returned by them each quarter, following which Congress, at the instance of the Postmaster-General, enacted the system of fixed salaries for limited terms of two years, based on the average receipts for the two years antecedent, that Congress should have intervened before that system had been in force two years, and prohibited any changes whatever *ad infinitum,* except in the few cases where the salary system produced a loss of the actual earnings of the postmasters of ten per cent. or more, and in such cases that Congress should have as a remedy required the repetition of the same wrong in the succeeding term, and in all subsequent terms, for it is manifest that a rule of establishing salaries which would produce a loss by reason of an increase of business in one term would repeat that loss in the succeeding, and every subsequent term, if the increase continued, and at the same time enact a prohibition upon the Postmaster-General of decreasing the salaries at postoffices decreasing in receipts, and instead thereof maintain the salaries at such postoffices *ad infinitum* at the standard of the greatest receipts of such offices at an anterior period, for it is clear that the doctrine of the court below includes this as one of the intents of the act of 1866. These considerations show that the court below affirmed that an act passed in 1866 as a proviso to section two of the prior act of July 1st, 1864, containing in the body of the additional act a description of the wrong for which it was a remedy, transformed and reversed the whole material part of the prior act, and not only perpetuated the great vice of that act of depriving postmasters at offices increasing in business of their just compensation, but added thereto the monstrous wrong of compelling the United States Government to pay millions of dollars of bonuses to thousands of postmasters at post offices decreasing in business. These considerations also demonstrate with mathematical certainty that the court below was unable to discover any ground for denying the writ prayed for, for the reasons advanced by that court are repugnant to every principle of justice and to every rule of construction of statutes laid down and followed by the courts from the beginning of jurisprudence.

Upon an examination of the commission Act of June 22d, 1854, the postoffice salary Act of July 1st, 1864, the postmaster's readjustment salary Acts of 1866 and 1883, it is plain that no salary could be allowed any postmaster, in the first instance, between July 1st, 1864, and July 1st, 1874, except, by the rule of ascertainment of such salaries and the limit of terms thereof prescribed by the original salary Act of July 1st, 1864. And thereunder, the salary could be ascertained and fixed for future limited terms, only upon the basis of the postages collected within the term next preceding. It also appears that the Act of June 12, 1866, in no way interfered with the allowance of salaries, by the rule of the Act of July 1st, 1864. It is equally plain that the Act of June 12, 1866, could, by no possibility, have any effect whatever, except by increasing, to the proper standard, the deficient salaries produced by the Act of July 1st, 1864, in consequence of increase of receipts above the basis which measured the salary allowed under the Act of 1864. It is equally plain, that no such changes of deficient salaries of postmasters could be made, except by making the same conform to the actual commissions exhibited by the returns, which showed the deficiency in the salary. From these considerations, it is plain that the intent and purpose of the Acts of 1866 and 1883, are as fixed and certain as any mathematical truth can be. And as stated, this certain and fixed intent of these acts, as the record shows, was affirmed continuously from and after, the enactment of the Act of March 3, 1883, by the Postmaster-General himself. And when this court, in the second McLean case, stated in emphatic language that the Act of Congress of March 3, 1883, authorized and directed the Postmaster-General, in proper cases, to make readjustments of salaries which should act retrospectively, and then proceeded to say: "Upon a very careful examination of these statutes, we are forced to the conclusion, that the legislature in these enactments did not contemplate a readjustment of the salaries of any of these officers oftener than once in two years as a legal duty or obligation upon the part of the Postmaster-General," it is understood to constitute in effect, an affirmation of the rule of readjustment of salaries of postmasters, required by the Acts of 1866 and 1883, as laid down and published in the orders of the Postmaster-General, which are to be found in this record. This view seems to be conclusive, because the court laid down the rule of readjustments of salaries at postoffices, required by the Act of 1864, and this rule covered every readjustment of salary required by any law, as to future terms of service. The rule affirmed, as to the Act of 1864, is that readjustments of salaries once in every two years for future terms of two years on the basis described was required, as to every postoffice in the United States, and coupled with this is the decision that the Act of June 12, 1866, required the readjustments of salaries of none of these officers oftener than once in two years. Thus, it is certain, by the decision of this court, that the only requirement of the Act of June 12, 1866, is a readjustment, once in two years, of the deficient salaries of the three classes of postmasters named, which resulted from the application of the rule of the postoffice salary Act of 1864. At least, by this decision, the question is narrowed to this alternative, either both of the remedial Acts of June 12, 1866, and of March 3, 1883, are absurd legislative nullities, or they require these deficient salaries to be readjusted by the method laid down by Postmaster-General Gresham, and by the method which seems to be laid down by this court, in the second McLean case. To affirm that the Act of 1866 required only the re-establishment of salaries, by the rule of the Act of July 1st, 1864, as to the cases described in the Act of 1866, is to declare that statute a nullity, for every such readjustment was required by the prior Act of July 1st, 1864. To affirm this, of the Act of 1866, is to affirm that Congress seventeen years later passed another absurd legislative nullity to enforce the legislative nullity of 1866.

"Under the Provision of Said Section"

The court below appear to have based their conclusion upon the quoted words of the act of June 12, 1866.

In view of this, it is necessary to examine the second section of the act of July 1, 1864, as to what were the provisions contained in that section before the passage of the act of 1866, and also as to what were the provisions of that section when amended by the proviso enacted by the act of June 12, 1866.

First of all, it is manifest, that provision, or provisions, are made in every statute for some object requiring legislation. Upon examination of the original section 2, it appears plainly, that the two objects of the provisions of that act are first, the re-establishment of the salaries at every postoffice in the United States for a term of two years, on the basis of the average commissions of the antecedent term of two years, and second, to authorize the Postmaster-General to intervene at any time within the term for which the salary was thus fixed, and to decrease or increase, upon decreasing or increasing receipts, the salary for the unexpired part of the term, in order to bring about as near as might be, by that method, an approximate correspondence between the salary allowed and the commissions. These are the elementary fundamental provisions of that act. The other provisions of that act are merely the method of action required to accomplish these objects. No effect could be given to these readjustments of office salaries, except by notices communicated in writing, by the Postmaster-General to the Auditor, because the Auditor, without such written notices, could neither increase nor diminish the salary credits in his office; and the provision that the action of the Postmaster-General should enter of record in his own office, his action was simply a necessary provision in order to accomplish an orderly administration of the law, in his own Department. The requirement that any change made in such salary shall not take effect until the first day of the quarter next following such order constitutes a part of each of the two fundamental provisions of the act. This is an exact description of all of the provisions of the original section 2, of the Act of July 1st, 1864. Section 8 of the Act of June 12, 1866, is a statute enacted at that date, and it contains a provision of its own, whatever that provision may be. It is not a re-enactment of either of the two fundamental provisions of the original act, for to so hold, would be to make it a nullity and an absurdity. Whatever this provision is, the law-making power on the 12th of June, 1866, put this provision itself under the original section 2, of the Act of July 1st, 1864. When this was done, there was a third fundamental provision, covered by section 2, as amended, and the other provisions of the original section 2, so far as applicable, applied to the third provision, as well as to the first and second.

These applicable provisions required the Postmaster-General to notify the Auditor, and to keep a record in his own office of his action, in compliance with the third provision of this amended section. Besides this, the mandatory part of the original section required the Postmaster-General to take action once in two years, and the time as to when the Postmaster-General should take action under the added and third provision is not stated, and by fair implication, this requirement of action once in two years is attached to the third provision. This requirement is rendered certain when it is considered, that under the operation of the original act the fact as to whether the salary allowed under it was ten per cent. less than the commissions could not be determined until the end of the two years' term. What then is the third provision added to section 2 by the Act of 1866? The one and only answer is that of the law itself, namely, that the Postmaster-General shall readjust salaries of postmasters of the three classes specified, when the returns show the allowed salary to be ten per cent. less than the commissions. To say that the Act of 1866 re-enacted the requirement that the Postmaster-General should re-establish the salaries of all third, fourth and fifth class postmasters whose returns showed the allowed salary allowed in the third term to be ten per cent. less than the commissions for the ensuing term of two years on the basis of the average commissions of the antecedent term, is to affirm that the Act of 1866 is a nullity, because the same requirement is contained in the original section 2. To affirm that the Act of June 12, 1866, is not a nullity, and does re-enact this requirement, is to say that the fundamental provisions of the original section 2 are repealed by a proviso added thereto and a requirement the reverse of the fundamental provisions is substituted by it, in this, that the Postmaster-General, by the proviso, is ordered not to make any readjustments of salaries at post-offices once in two years, except, in such cases of third, fourth and fifth-class postmasters as lose ten per cent. or more of their just earnings by the very rule thus re-enacted.

These considerations amount to a demonstration that the amended section 2 of the Act of July 1st, 1864, contained provisions for the following legislative objects or purposes: First, a requirement that the salaries at all post-offices in the United States, at the end of every two years, should be changed for the ensuing term of two years, so far as necessary to conform to the average commissions for the antecedent term of two years. Second, that the Postmaster-General should, at his discretion, intervene at any time during the term succeeding, and decrease or increase the salary upon decreasing or increasing receipts, for the unexpired part of the term in order to maintain the salaries within the term, approximately upon the basis of commissions. Third, that the Postmaster-General at the end of every term of two years, as to every postmaster of the third, fourth or fifth class, who lost ten per cent. or more of the commissions shown by the returns within the term then ended, by applying the two preceding provisions, should readjust the salary on the returns themselves and cause to be credited to such postmasters, the difference between the salary thus allowed and what he would have received in commissions under the act of 1854.

This third requirement, in an emphatic sense, was *under the provisions of section 2*, because it was to be done once in two years, it was to be recorded in the Post-Office Department and communicated to the Auditor for the Post-Office Department, and as by the act of the law-making power, this fundamental provision was added to and attached to section 2, that was also among and under the provisions of section 2.

"IN THE ABSENCE OF CLEAR INDICATIONS TO THE CONTRARY EVERY STATUTE IS PROSPECTIVE AND THIS AMENDMENT SHOWS AS LITTLE INDICATION OF A CONTRARY INTENT AS DID THE SECTION WHICH IT AMENDED." (Extract from the opinion of the court below.)

This consideration also appears to be one of the grounds upon which the conclusions of the court below was founded.

It is conceded that the Act of June 12, 1866, was a prospective statute, because it, in plain terms, provides for acts to be done by the Postmaster-General subsequent to its enactment. Its sole requirement was, that the Postmaster-General should readjust the deficient salaries WHEN the returns showed the salary allowed to be ten per cent. less than the commissions. It is true that in June, 1866, it had been demonstrated that the salaries allowed by the rule of the Act of July 1st, 1864, was causing a large loss in many cases of a large part of just compensation of certain postmasters, and that this fact alone constituted the reason for the enactment of the statute of 1866. In the nature of the case, the Postmaster-General could not act under its provisions till July 1st, 1866, and when he did act, he was required by this law to readjust the deficient salaries, and to readjust the deficient salaries of postmasters, in the nature of the case, required such readjustment to be made on the basis of the returns showing the deficiency, and these returns, of necessity, were the returns made within a past term of service. Because a readjustment of a salary could only be made for a past term, in no sense makes of the Act of 1866 a retrospective statute. From the beginning of the Government to 1864, and in nearly all the cases since 1874, postmasters have been compensated upon an adjustment of pay for past terms, and the Act of 1866, therefore, introduced no new rule in that regard.

HARVEY SPALDING,
Attorney for the Plaintiff in Error.

WASHINGTON, D. C.,
December 5th, 1892.

Office Supreme Court U. S.
FILED.
DEC 14 1892
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

October Term, 1892.

The United States ex rel. Elizabeth Trask
vs.
John Wanamaker, Postmaster-General.
No. 1232.

BRIEF FOR THE DEFENDANT IN ERROR.

Wm. A. Maury,
Assistant Attorney-General.

Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES EX REL. ELIZABETH Trask *vs.* JOHN WANAMAKER, POSTMASTER-GENERAL.	No. 1232.

BRIEF FOR THE DEFENDANT IN ERROR.

This is an application for the writ of mandamus under the following circumstances: The relator was installed as postmaster at Emporia, Kans., on October 1, 1864, and continued to hold the office up to and including June 30, 1870.

When she entered upon the office, which was of the fourth class, the compensation of incumbents of that grade of post-office was regulated by the *act of July 1, 1864* (13 Stat., 335, c. 197), which repealed the *act of June 22, 1854* (10 Stat., 298, c. 61), by which postmasters were compensated by commissions on the earnings of their offices.

The act of July 1, 1864, established five classes of post-offices, distinguished from one another by the amount of salary, and provided that for the two years next preceding

July 1, 1864, and for each succeeding period of two years thereafter, the salaries of postmasters should be readjusted by the Postmaster-General upon the basis of what would have been the average compensation by commission on quarterly postal receipts for the two years next preceding under the act of June 22, 1854, the salaries so readjusted to be, of course, within the maximum salaries of the offices to which they belong, respectively, as designated by the act of 1864. This biennial readjustment of salaries, it is provided, shall take effect at the commencement of the quarter next succeeding the order of readjustment.

It is thus perceived that while the principle of the act of 1854 fixing compensation by commissions was supplanted by the principle of maximum salaries introduced by the act of 1864, still the principle of the act of 1854 was made the basis of salary readjustment under the act of 1864. The difference, then, between the two acts was that the limit to compensation under the act of 1854 was the rate of commissions allowed, while that of the act of 1864 was a never-varying maximum for each grade of office.

It was in this state of things that the *Act of June 12, 1866* (14 Stat., 60, c. 114), was passed. Section 8 of this act provides as follows:

> *And be it further enacted,* That section two of the act entitled "An act to establish salaries for postmasters, and for other purposes," approved July first, eighteen hundred and sixty-four, be amended by adding the following: *Provided,* That when the quarterly returns of any postmaster of the third, fourth, or fifth class show that the salary allowed is ten per centum less than it would be on the basis of commissions under the act of eighteen hundred and fifty-four, fixing compensation, then the Postmaster-General shall review and readjust under the provisions of said section.

It is the contention of the relator that this act was intended to be retrospective in its operation as to all postmasters of the third, fourth, and fifth classes; and, consequently, that as the 10 per cent deficiency existed in her salary for seven quarters of the biennial period ending on June 30, 1866, and for all the quarters of the biennial periods ending on June 30, 1868, and June 30, 1870, she is entitled to have and receive the sum of $2,206.19, that being the aggregate of the deficiencies claimed to be due her upon a readjustment under section 8 of the act of 1866.

The court below held that the act of 1866 was *prospective* in its operation, and consequently that the demand of relator on the Postmaster-General to readjust her salary for the whole time of her service from October 1, 1864, to June 30, 1870, was properly rejected by that officer.

Nor is the relator's difficulty removed by the *Act of March 3, 1883* (22 Stat., p. 487, c. 119), which provides as follows:

> That the Postmaster General be, and he is hereby, authorized and directed to readjust the salaries of all postmasters and late postmasters of the third, fourth, and fifth classes under the classification provided in the act of June 1, 1864, whose salaries have not heretofore been readjusted under the terms of section 8 of the act of June 12, 1866, who made sworn returns of receipts and business for readjustment of salary to the Postmaster General, the First Assistant Postmaster General, or the Third Assistant Postmaster General, or who made quarterly returns in conformity to the then existing laws and regulations, showing that the salary allowed was 10 per centum less than it would have been upon the basis of commissions under the act of 1854, such readjustment to be made in accordance with the mode presented in section 8 of the act of June 12, 1866, and to date from the beginning of the quarter succeeding that in which such sworn returns of receipts and business returns were made.

As to this act, which is the first provision requiring readjustments of salaries for terms which had expired, the court below held that it was limited to cases that had arisen under the act of 1866.

The act of July 1, 1864, section 2, provides that:

> The Postmaster General shall review once in two years, and in special cases, upon satisfactory representation, as much oftener as he may deem expedient, and readjust, on the basis of the preceding section (namely, Sec. 1), the salary assigned by him to any office; but any change made in such salary shall not take effect until the first day of the quarter next following such order, *and all orders made assigning or changing salaries shall be made in writing and in his journal and notified to the auditor of the Post Office Department.*

The Postmaster-General has declined to make an order such as is required by this section and such as is broad enough to cover the whole period of relator's service.

The prayer of the petition is that the Postmaster-General may be commanded to make such an order by the writ of mandamus.

The petition was demurred to by the Postmaster-General, and the demurrer was sustained, and the defendant had judgment accordingly.

ARGUMENT.

After the careful statement of the law of mandamus in its relations to the heads of the Executive Departments by this court in the case of *United States ex rel. Dunlap* v. *Black* (128 U. S. R., p. 41), it seems hardly necessary to enter into a discussion of the merits of relator's case under the statutes above referred to.

In the case just cited, Mr. Justice Bradley said, speaking for the court:

> The principle of law deducible from these two cases is not difficult to announce. The court will not interfere by mandamus with the executive officers of the Government in the exercise of their ordinary official duties, *even where those duties require an interpretation of the law, the court*

> *having no appellate power for that purpose;* but when they refuse to act in a case at all, or when, by special statute or otherwise, a mere ministerial duty is imposed upon them—that is, a service which they are bound to perform without further question—then, if they refuse, a mandamus may be issued to compel them.
>
> Judged by this rule the present case presents no difficulty. The Commissioner of Pensions did not refuse to act or decide. He did act and decide. He adopted an interpretation of the law adverse to the relator, and his decision was confirmed by the Secretary of the Interior, as evidenced by his signature of the certificate. *Whether, if the law were properly before us for consideration, we should be of the same opinion or of a different opinion is of no consequence in the decision of this case. We have no appellate power over the Commissioner and no right to review his decision.* That decision and his action taken thereon were made and done in the exercise of his official functions. They were by no means merely ministerial acts. [Italics our own.]

If, then, this court refused to interpret the pension laws with a view to commanding the Commissioner of Pensions to carry out its interpretation instead of his own, it seems to us that this court must, by a parity of reasoning, refuse to take the statutes in question governing the postal service out of the hands of the Postmaster-General by substituting its interpretation of those statutes for his.

It is somewhat remarkable that the court below should have entered into a discussion of the merits of this case, seeing that the case presented in the petition is plainly one which the judicial department has no right to consider. It is to be regretted that the petition was not dismissed for the reasons stated by Mr. Justice Bradley (*supra*). The fact that the court stopped to consider the merits may have led to this writ of error.

It is submitted that the record presents no case for the writ of mandamus, and that the judgment should be affirmed.

Wm. A. Maury,
Assistant Attorney-General.

APPENDIX.

[Act of July 1, 1864, C. 335, (13 Stat., 335).]

AN ACT to establish salaries for postmasters, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the annual compensation of postmasters shall be at a fixed salary, in lieu of commissions, to be divided into five classes, exclusive of the postmaster of the city of New York. Postmasters of the first class shall receive not more than four thousand dollars, nor less than three thousand dollars; postmasters of the second class shall receive less than three thousand dollars and not less than two thousand dollars; postmasters of the third class shall receive less than two thousand dollars and not less than one thousand dollars; postmasters of the fourth class shall receive less than one thousand dollars and not less than one hundred dollars; postmasters of the fifth class shall receive less than one hundred dollars. The compensation of the postmaster of New York shall be six thousand dollars per annum, to take effect on the first day of July, eighteen hundred and sixty-four, and the compensation of postmasters of the several classes aforesaid shall be established by the Postmaster-General under the rules hereinafter provided.

Whenever the compensation of postmasters of the several offices (except the office of New York), for the two consecutive years next preceding the first day of July, eighteen hundred and sixty-four, shall have amounted to an average annual sum not less than three thousand dollars, such offices shall be assigned to the first class; whenever it shall have amounted to less than three thousand dollars, but not less than two thousand dollars, such offices shall be assigned to the second class; whenever it shall have amounted to less than two thousand dollars, but not less than one thousand dollars, such offices shall be assigned to the third class; whenever it shall have amounted to less than one thousand dollars, but not less than one hundred dollars, such offices shall be assigned to the fourth class; and whenever it shall have amounted to less than one hundred dollars, such offices shall be assigned to the fifth class. To offices of the first, second, and third classes shall be severally assigned salaries, in even hundreds of dollars, as nearly as practicable in amount the same as, but not exceeding, the average compensation of the postmasters thereof for the two years next preceding; and to offices of the fourth class shall be assigned severally salaries, in even tens of dollars, as nearly as practicable in amount the same as, but not exceeding, such average compensation for the two years next preceding; and to offices of the fifth class shall be severally assigned salaries, in even dollars, as nearly as practicable in amount the same as, but not exceeding, such average compensation for the two years next preceding. Wherever returns showing the average of annual compensation of postmasters for the two years next preceding the first day of July, eighteen hundred and sixty-four, shall not have been received at the Post-Office Department at the time of adjustment, the same may be estimated by the Postmaster-General for the purpose of adjusting the salaries of Postmasters herein provided for. And it shall be the duty of the Auditor of the Treasury for the Post-Office Department to obtain from postmasters their quarterly accounts, with the vouchers necessary to a correct adjustment thereof, and to report to the Postmaster-General all failures of postmasters to render such returns within a proper period after the close of each quarter.

Sec. 2. *And be it further enacted*, That the Postmaster-General shall review once in two years, and in special cases, upon satisfactory representation, as much oftener as he may deem expedient, and readjust, on the basis of the preceding section, the salary assigned by him to any office; but any change made in such salary shall not take effect until the first day of the quarter next following such order, and all orders made assigning or changing salaries shall be made in writing and recorded in his journal, and notified to the auditor for the Post-Office Department.

IN THE

Supreme Court of the United States.

JAMES H. McKENNEY, CLERK.

OCTOBER TERM, 1892.

THE UNITED STATES, *ex rel.* ELIZABETH TRASK, Plaintiff in Error,
vs.
JOHN WANAMAKER, Postmaster-General.

Term No. 1232.

Plaintiff's Reply to Defendant's Points.

The right of the plaintiff to the writ prayed for is determined by the nature of the thing to be done. If the thing to be done is merely ministerial, the right to the writ is complete because it has been determined that there is no other remedy. To deny the right to the writ is to affirm that the thing to be done involves the exercise of judgment and discretion on the part of the defendant. The thing to be done is a thing ordered by Congress in Section 8 of the act of June 12, 1866, and when this court, in the first McLean case, said that "If the Executive Officer failed to do his duty he might have been constrained by mandamus," this court decided that the duty imposed upon the Postmaster-General by Section 8 of the act of June 12, 1866, is a ministerial duty because otherwise the Postmaster-General could not be constrained by that writ. The question as to whether the duty imposed upon the Postmaster-General is a ministerial duty is settled by this court and can not be reopened in the present case.

Upon careful consideration, what in fact are these duties? The only answer is that the Postmaster-General is required to ascertain in dollars and cents, from the dollars and cents of postal revenues returned by the postmasters, the compensation of postmasters, and cause the same to be credited in the accounts of postmasters. There has never been any other way of ascertaining and crediting postmasters with the compensation earned by them except from the returns of postages. From these returns, for more than a hundred years, it has been required of certain officers to ascertain and credit, in exact sums, the amount of compensation. From the beginning of the Government till July 1, 1864, the compensation was ascertained from each return. Since July 1, 1874, such compensation as to all non-Presidential postmasters has been ascertained and credited on each return. Since 1874 the compensation of Presidential postmasters, numbering in 1874 about 2,000, and at the present time about 3,100, has been ascertained by the Postmaster-General upon certain returns for a limited term succeeding. Thus, the Postmaster-General on the first day of July in each year is required to ascertain, from the four quarterly returns preceding, the compensation for the four quarterly returns succeeding, and cause